HON'BLE SRI JUSTICE C.Y. SOMAYAJULU

W.P.NO. 13044 OF 1999

DATED: 21.11.2007

Between:

T. Laxmi Narasamma

… Petitioner

and

Govt. of Andhra Pradesh, Special
Deputy Collector (TW), Utnoor,
Adilabad and others

… Respondents

HON'BLE SRI JUSTICE C.Y. SOMAYAJULU

W.P.NO. 13044 OF 1999

ORAL ORDER:

Questioning the proceedings No.TWA4/340/98 dated 28.4.1999 issued by the 2nd respondent, directing the petitioner to repay a sum of Rs.1,60,000/-, petitioner filed this writ petition.

The case in brief of the petitioner is that she is the owner of the lands bearing Sy.Nos.1/1, 3, 18/1, 8, 12/19 admeasuring Ac.7.35 cents, Ac. 6.68 cents, Ac. 2.68 cents, Ac. 6.30 cents and Ac.18.00 respectively, and that she gave her consent, when the respondents sought for her willingness to acquire Ac.18.00 belonging to her for public purpose, if Rs.10,000/- per acre and the value of the irrigation well, standing mango and other fruit bearing trees is given to her, but the respondents agreed to pay @ Rs.5,000/- per acre, for which she accepted. In respect of the fruit bearing trees and the irrigation well in that land, respondents stated that they would pay the value after obtaining a technical appraisal report. As per the appraisal report from

the Horticulture department, amount payable towards the loss of fruit bearing trees came to Rs.2,46,433/- and the value of the irrigation well was fixed at Rs.25,466/-. Though she accepted the valuation in the said report, she was paid only Rs.1,60,000/- promising that the remaining Rs.1,50,000/- would be paid later. As that amount was not paid and as she was insisting on payment of the amount due to her, respondents served her with a memo calling upon her to pay Rs.1,60,000/- alleging that that amount was paid to her in excess. Though she sent a reply that some more amount is due to her, respondents without affording an opportunity of being heard to her, served the notice impugned calling upon her to repay Rs.1,60,000/- allegedly paid in excess to her. Hence, the writ petition.

The case in brief of the respondents is that the petitioner, who is the owner of Ac.18 in S.No.12/19, executed a consent letter on a stamp paper worth Rs.5/-, accepting to sell the said land at the rate of Rs.5,000/- per acre, and so Rs.90,000/- was paid to her as compensation, and so paying compensation for the value of the fruit bearing trees and irrigation well does not arise more so because her land was purchased as per G.O.Ms.No.242, SW (F) Department dated 4.12.1991. As the Assistant Director (Horticulture), Adilabad and Executive Engineer (Tribal Welfare, Utnoor, inspected the land of the

petitioner and evaluated the value of (98) Mango trees and (7) Guava trees at Rs. 2,46,463/- and the irrigation well at Rs.26,466/-, the Revenue Divisional Officer, Utnoor, proposed to pay a sum of Rs.1,50,000/- towards the value of (98) Mango trees and (7) Guava trees and Rs.10,000/- towards irrigation well, and so that amount was sanctioned and paid by the then Project Officer, ITDA, Utnoor. After the petitioner made a request for payment of the balance amount, a report from the Revenue Divisional Officer was called for and then it came to light that Rs.1,60,000/- was paid to her in excess of the amount payable to her, in as much she sold the land only at Rs.5,000/- per acre and so she was asked to repay the amount paid to her in excess of her entitlement.

The contention of Sri P. Venugopal, learned counsel for the petitioner, is that since the petitioner expressed her willingness to sell her Ac.18.00 in Sy.No.12/19 and other lands as per the provisions of the Land Acquisition Act, 1894, at the rate of Rs.10,000/- per acre besides Rs.1,20,000/- as compensation for standing mango trees at Rs.20,000/- and Rs.4,000/- per Jama trees in an acre and Rs.25,000/- towards the value of the irrigation well, and agreed to sell the land only at Rs.5,000/- per acre later during negotiation, after she was paid the amount payable to her towards the value of the land she made a

request for payment of the value of the standing trees and the well and so the value of the trees and the well in the land sold by the petitioner was got appraised and a part of the amount arrived at only was paid, and when she made a request for payment of the balance amount due to her, the respondents, to get over the liability to pay the balance due to the petitioner, issued the notice calling upon her to repay Rs.1,60,000/- allegedly paid to her in excess towards the value of the trees and the well and so the notice impugned is liable to be quashed, more so, because it was issued without affording an opportunity of being heard to the petitioner.

The contention of the learned Assistant Government Pleader for Social Welfare is that since the land belonging to the petitioner was purchased as per G.O.Ms.No.242 SW (F) Department dated 4.12.1991, and was not acquired under the provisions of the Land Acquisition Act, question of payment of any compensation for the fruit bearing trees and the irrigation well apart from the value of the land does not arise and contended that the petitioner in collusion with some of the members of the staff of the government departments managed to receive Rs.1,60,000/- over and above the amount due and payable to her, towards the value of the trees and the well, and only after she made a request for payment of the balance amount allegedly due to her, the officers inspected the records and found that an amount of

Rs.1,60,000/- was paid in excess to her, a show cause notice as to why the amount paid in excess to her should not be recovered, but as the petitioner did not send any reply to that notice, the notice impugned was served on her and so the petitioner is not entitled to any relief.

On my direction, the relevant file is produced before me. The record reveals that the petitioner initially expressed her willingness, on a stamp paper worth Rs.5/- dated 4.9.1991, for acquisition of Ac.41 belonging to her in various survey numbers under the provisions of the Land Acquisition, 1894 or under any other Act, for public purpose, subject to payment of Rs.10,000/- per acre and Rs.1,20,000/- towards standing mango trees at Rs.20,000/- per acre, Rs.4,000/- for Jama trees and Rs.25,000/- towards the cost of the well. Subsequently, she executed a consent letter on a stamp paper worth Rs.5/- dated 20.7.1993 to sell her lands to the Government, under the Land Purchase Scheme at Rs.5,000/- per acre. Thereafter, notice in Form No. H was issued calling for objections and as no objections were received, the land was acquired under the provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (for short 'the Regulation). In view thereof, it is clear that the land of the petitioner was acquired under the provisions of the Regulation but not under the provisions of the Land Acquisition Act, 1894.

On representations made by the petitioner for payment of compensation for the trees and the well in the land, which is strongly relied by the learned counsel for the petitioner, the Project Officer, ITDA, Utnoor, issued the following proceedings:

> ***"The pattedar has filed a petition vide reference 2nd cited, with a request to pay the value of trees i.e. (98) Mango, (8) Guava and one irrigation well existing in the purchased land in Sy.No.12/19 of Kannepalli as per the provisions under Section 23 of the Land Acquisition Act.***
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> ***Thus vide reference 3rd cited, the Asst. Director (Horticulture) Adilabad, and E.E. (TW) have been addressed to inspect the fruit bearing trees and irrigation well existing in the purchased land and to assess the value of trees and irrigation well.***
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> ***Vide reference 4th and 5th cited, the Asst. Director (H), Adilabad and E.E. (TW) duly inspecting the spot proposed the value of fruit bearing trees @ Rs.2,46,463/- and irrigation well @ Rs.26,466/-.***
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> ***The Revenue Divisional Officer and Mandal Revenue Officer, Tiryani have proposed in the proposals the value of (98) Mango trees, (7) Guava trees @ Rs.1,50,000/- and one irrigation well @ Rs.10,000/- total Rs.1,60,000/-. This amount already been preserved in R.I.A.D.P. which could not be paid for want of Technical assessment of the fruit bearing trees and irrigation well by the competent authorities by the then Project Officer, ITDA, Utnoor before disbandment of the scheme.***
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> ***The Pattedar is entitled to get the compensation of fruit bearing trees and irrigation well existing in the purchased lands S.No.12/19 covering in an area of Ac.18.00 situated at Kannepalli village of Tiryani Mandal.***
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> ***In view of the above and as proposed by the RDO, Utnoor and Mandal Revenue Officer, Tiryani, sanction is hereby accorded for payment of Rs.1,60,000/- as value of fruit bearing trees and irrigation well existing in Sy.No.12/19 of Kannepalli village."***
> **(Underlining mine)**

So it is clear that the Project Officer, under an erroneous assumption that the land of the petitioner was acquired under the

provisions of the Land Acquisition Act, 1894, initiated proposal for evaluating the value of the trees and the well in the land agreed to be parted with by the petitioner. That assumption on his part that petitioner is entitled to the value of the trees and well, apart from Rs. 5,000/- paid to her is not correct, firstly because the land of the petitioner was not acquired under the provisions of the Land Acquisition Act, 1894, but was acquired under the provisions of the Regulation and secondly because Section 23 of the Land Acquisition Act, 1894 applies to cases in which the Land Acquisition Officer refers the case to court for determining the compensation to be awarded to the acquired land when the owner of that land does not agree to the compensation arrived at by him and thirdly because in cases where the owner of the land expresses his willingness to part with the land proposed to be acquired at a particular price, that Section 23 of the Land Acquisition Act, 1894 does not apply. So question of petitioner being entitled to value of the trees and well apart from the value of the land at Rs.5,000/- per acre agreed to by her, does not arise.

All the above apart, it is not in dispute that the land of the petitioner, taken over by the respondents, is situated in Scheduled area and so it is governed by the provisions of the Regulation. So question of the petitioner selling her land to anybody else except to a tribal does not arise. Obviously because the petitioner was unable to

sell her land to any outsider, or because no tribal was ready to purchase her land at the price quoted by her, petitioner might have, through her letter of willingness executed by her on a stamp paper of Rs.5/- dated 20.7.1993 which is long subsequent to the letter of offer executed on stamp paper dated 4.9.1991 quoting a price of Rs.10,000/- per acre and besides value of trees etc., agreed to sell her land at Rs.5,000/- per acre, which means and implies that she agreed to sell her land with trees and well in existence therein, as she did not mention in her willingness letter that the price of Rs.5,000/- quoted by her is only for the land but not for the trees therein. In fact, 'land' includes the trees and structures existing thereon. So, questions of payment of 'compensation' to the tree and well existing in the land 'sold' by the petitioner to the Government, does not arise.

All the above part, as per Regulation No.3 of the Regulation, petitioner would only be entitled to compensation in accordance with the principles specified in Section 10 of the A.P. Ceiling on Agricultural Holdings Act, 1961 for the land agreed to be sold by her to the Government. As per that section, the compensation payable has to be calculated as per the rates specified in the second Schedule. As per the Second Schedule, for the first four and half family holding in excess of the ceiling area, the compensation payable would be five

times the gross income. Probably, because the compensation that would be due to her under the Act, may be less than the amount offered, petitioner might have agreed to sell the land at Rs.5,000/- per acre. The officer who authored the letter dated 18.6.1995, relied on by the petitioner, had without going to the earlier record, must have paid the amount towards the value of the trees and well etc., over and above the amount agreed to be received by the petitioner due to his negligence or otherwise. It is for the Government to take appropriate action against the author of the letter dated 18.6.1995 for his ordering payment of excess amount to the petitioner. Factual errors committed by an officer would not clothe the petitioner with a right to claim excess amount. Since the amount paid in excess by mistake can be recovered, respondents who paid excess amount to the petitioner due to a mistake are entitled to recover the said amount after discovery of the mistake. Through the notice dated 9.9.1998, the Government asked the petitioner to refund the amount paid to her in excess of Rs.5,000/- per acre. Petitioner did not reply to the notice. So it cannot be said that petitioner was not given a show cause notice.

In the circumstances, nothing irregular is found in the respondents calling upon the petitioner to repay the amount of Rs.1,60,000/- paid in excess to her.

Hence, the writ petition is dismissed. No costs.

C.Y. SOMAYAJULU, J

Date: 21.11.2007

Note: LR copy to be marked.

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